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Robert H. Jackson
Executive Director-
Federal Regulatory

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Ex Parte

May 23, 1997

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

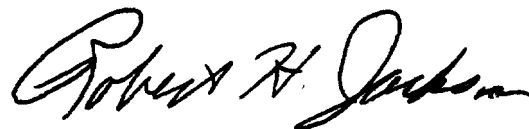
Re: Implementation of Section 273 of the Communications
Act of 1934 as amended by the Telecommunications Act
of 1996, CC Docket No. 95-116

Dear Mr. Caton:

Enclosed is a copy of a letter sent to Bill Howden, Greg Cooke, Matt Nagler and Les Selzer of the Common Carrier Bureau. The letter answers some questions posed to U S WEST in an earlier meeting on this proceeding. Please include a copy of this letter in the record in CC Docket No. 96-254.

In accordance with 47 C.F.R. § 1.1206(a)(1) of Commission's rules, the original of this letter and one copy are being filed with your office. Acknowledgment and date of receipt are requested. A duplicate of this letter is included for this purpose.

Sincerely,



cc: Bill Howden
Greg Cooke
Matt Nagler
Les Selzer

No. of Copies rec'd
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John L. Traylor
Senior Attorney
Law Department

Ex Parte

May 23, 1997

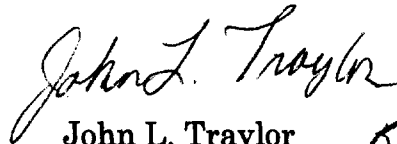
Bill Howden
Greg Cook
Matt Nagler
Les Selzer
Federal Communications Commission
Common Carrier Bureau
Network Services Division
2000 M Street, N.W.
Washington, D.C. 20554

Re: *Implementation of Section 273 of the Communications Act of 1934, as
amended by the Telecommunications Act of 1996, CC Docket No. 96-254*

Gentlemen:

Attached are responses to additional questions you asked at our meeting with you on May 1, 1997. If you have any questions, please feel free to contact us.

Sincerely,


John L. Traylor *KHJ*

Attachment

c: Robert H. Jackson

ATTACHMENT

I. IMPLEMENTATION AND ENFORCEMENT OF PROCUREMENT STANDARDS UNDER SECTION 273(e)(2)

You have asked for U S WEST's views about what type of enforcement policy for Section 273(e) the Federal Communications Commission ("Commission") should adopt, including the type of penalties which the Commission should impose for discrimination violations.

A. Applicability Of The Procurement Standards

Section 273(e)(2) provides that each Bell Operating Company ("BOC") "shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors."¹ These procurement standards apply only to the procurement of telecommunications equipment and the services and software which are integral to that equipment.² Moreover, these procurement standards apply only when a BOC is authorized to engage in manufacturing through a separate affiliate or when it is entitled to receive a royalty in the equipment which is the subject of a procurement.³

¹ 47 U.S.C. § 273(e)(2).

² U S WEST Reply Comments, CC Docket No. 96-254, filed Mar. 26, 1997 at 17-18.

³ U S WEST Comments, CC Docket No. 96-254, filed Feb. 24, 1997 at 24-25.

B. The BOCs Will Have Limited Incentives To Engage In Manufacturing

Market dynamics based upon AT&T Corp.'s ("AT&T") recent experience demonstrates that there may be few incentives for BOCs to engage in manufacturing telecommunications equipment or customer premises equipment ("CPE"). AT&T recently divested ownership of Lucent Technologies, its telecommunications equipment and CPE manufacturer. One of the reasons for this business decision was AT&T's recognition that carriers who compete with AT&T were reluctant to purchase equipment manufactured by AT&T:

Chairman Allen downplayed the significance of the Telecommunications Act as being the impetus for the restructuring plan, but admitted that new competition from the regional Bell operating companies (RBOCs) was one of the concerns. He also said that AT&T's leadership felt that the new technology company and NCR would be better able to compete in their industries without the AT&T name. (Some AT&T competitors in the communications services market object to buying technology and products from a division of AT&T.) While the AT&T label has been a boon to the communications services side of the business, it may have been a hindrance in the other marketplaces.⁴

The same dynamic may also discourage BOCs from engaging in manufacturing. Competitive local exchange carriers may be reluctant to purchase telecommunications equipment from a BOC, because they will compete with the BOC in the provision of local services.

⁴ "AT&T: Effects of Restructuring," Faulkner Company Profile.

C. Implementation Of Procurement Standards Under The
AT&T Consent Decree

The AT&T Consent Decree⁵ prohibited the BOCs from “discriminating between AT&T and its affiliates and their products and services and other persons and their products and services in the: (1) procurement of products and services”⁶ Within six months after implementation of the reorganization of AT&T and its operating companies, the Decree required each BOC to “submit to the Department of Justice procedures for ensuring compliance with the requirements of paragraph B.”⁷ The Department of Justice had authority to investigate complaints of a BOC’s failure to conduct a procurement of telecommunications equipment in accordance with the procurement plan and to pursue enforcement actions.

U S WEST filed a compliance plan with the Department of Justice. It was periodically modified and updated. In addition, U S WEST adopted the following company procurement policy which applies to the procurement by all U S WEST entities of all goods and services, not just to the procurement of telecommunications equipment:

It is the policy of U S WEST to purchase products and services based on merit and the Company’s overall business needs, regardless of source. Overall business needs include the appropriate balance of cost, timeliness, quality, technical suitability, economic diversity, legal

⁵ United States v. Western Electric Co., 552 F. Supp. 131 (D.D.C.), aff’d sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (“AT&T Consent Decree” or “Decree”). The Consent Decree resulting from this litigation was subsequently terminated. See Order, Civil Action No. 82-0192 (D.D.C. Apr. 11, 1996).

⁶ Id., 552 F. Supp. at 227 § II(B).

⁷ Id. § II(C).

requirements, and other valid business considerations. U S WEST will conduct all procurements in a non-discriminatory manner, including non-discriminatory access to information. (U S WEST Corporate Policies.)

The other BOCs also filed procurement compliance plans with the Department of Justice, adopted similar company procurement policies, and based their procurement of telecommunications equipment on objective, non-discriminatory business standards and criteria. These policies and procedures served the interests of all parties, including manufacturers, over the years the AT&T Consent Decree was in effect.

Based upon many years of actual experience, this provides one successful model which could guide the Commission in finding the proper balance between implementation and enforcement of the non-discrimination standards in Section 273(e)(2).

D. If A BOC Engages In Manufacturing, U S WEST Recommends That The BOC Submit An Annual Procurement Report

Procurement standards have already been established by Congress in Section 273(e)(2). Therefore, the Commission's focus should be to monitor a BOC's performance under those standards when they apply.

U S WEST recommends that the BOCs submit an annual procurement report after a BOC is permitted to engage in manufacturing telecommunications equipment and if the BOC makes the business decision to engage in such manufacturing. The purpose for such a report would permit the Commission to compare the dollar value of telecommunications equipment which the BOC procures

from its own manufacturing affiliate versus the dollar value of equipment procured from unaffiliated manufacturers. This would allow the Commission to monitor any perceived discrimination and to take additional action as warranted.

II. RELATIONSHIP BETWEEN SECTION 273(e)(3) AND SECTION 256

You have asked for U S WEST's view about the relationship between Section 273(e)(3) and Section 256.

Section 273(e)(3) provides that a BOC will engage in joint network planning and design with other local exchange carriers operating in the same area of interest. It further provides that no participant in the planning will be allowed to delay the introduction of new technology or the deployment of facilities to provide telecommunications services. The agreement of other carriers who participate in the planning is not required prior to deployment of new technology or facilities.

The guidelines with regard to network planning and design under Section 273(e)(3) are positioned in subsection 273(e) which describes standards governing "Bell Operating Company Equipment Procurement and Sales" after a BOC is permitted to engage in manufacturing. Therefore, the network planning and design guidelines in Section 273(e)(3) are specific. They are implicated only when a BOC begins to manufacture telecommunications equipment or CPE under the Telecommunications Act and, as a result thereof, wishes to introduce new technologies or to deploy new or additional facilities.

Section 256 has a broader scope. The intent of Section 256 is to ensure the development of standards that promote access to public telecommunications

networks providing telecommunications service, standards that promote access to information services by subscribers of rural telephone companies, and standards that promote access to network capabilities and services by individuals with disabilities. Some of these subjects will be addressed in recommendations which are being prepared by the Network Reliability and Interoperability Council ("NRIC").

The NRIC is composed of representatives from local exchange and interexchange carriers, suppliers, industry standards bodies and alliance organizations, and the cable industry. The NRIC has been charged by the Commission to provide advice about how the accessibility, reliability, interoperability, and interconnectivity of networks can be ensured. We understand that the NRIC will present its recommendations to the Commission on July 15, 1997.

The NRIC will provide recommendations both for the Commission and for the telecommunications industry. The objective of the recommendations is to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

Industry forums and standards-setting bodies, such as the T1 and TIA (ANSI accredited groups), will accept the NRIC's recommendations as valued input when establishing standards. These standards bodies bring issues to the industry which works to resolve them. We understand that one of the NRIC's principal recommendations will be that the Commission monitor the work of the industry

forums and standards-setting bodies, but that the direction of telecommunications should continue to be driven by the industry.

The scope of Section 256 is broad, and the scope of NRIC's forthcoming recommendations is also expected to be broad. On the other hand, the scope of Section 273(e)(3) is focused and targeted. It addresses joint network planning and design efforts between a BOC and other local exchange carriers (which include both incumbents as well as new entrants) to accommodate the development of telecommunications equipment and CPE which utilize the standards that are established by the industry. Section 273(e)(3) is implicated only after a BOC is permitted, and makes the business decision, to engage in manufacturing telecommunications equipment and CPE.